IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3474 OF 1995

M/s.Shreeji Plastics)
A Registered Partnership Firm)
registered under the Indian Partnership)
Act, 26/27, Industrial Estate, Agalgaon)
Road, Barsi, District Solapur.).. Petitioner

Versus

1) V.P. Ramaiah)
Regional Provident Fund Commissioner)
Pune, Pune Cantonment Board Bldg.)
Golibar Maidan, Pune 411 001.)

2) Union of India)
Notice to be served on Ministry of)
Law & Justice, Aayakar Bhavan)
2nd Floor, New Marine Lines)
Bombay 400 021.)

3) M/s. Yamuna Plastics)
a Registered Partnership Firm)
under the Partnership Act and)
having its ofice at 48, Industrial)
Estate, Agalgan Road, Barsi)
District Solapur.).. Respondents

Mr.P.N. Shastri for the Petitioner.

Mr.H.V. Mehta for Respondent Nos.1 and 2.

Respondent No.3 absent though served.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH JULY 2005

ORAL JUDGMENT :

. This Petition is directed against the order dated 15th March 1995 of the Regional Provident Fund Commissioner, Pune passed under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions

Act, 1952, hereinafter referred to as "the Act". By this order, the Commissioner has held that two establishments, namely, M/s.Shreeji Plastics, the Petitioner herein and M/s.Yamuna Plastics, Respondent No.3, are one and the same and as there is functional integrality between the two, the two units must be clubbed together to determine the provident fund payable to the employees.

2. An enquiry was initiated under Section 7-A of the Act. Two Officers from the Commissioner’s office have submitted reports dated 29th June 1983 and 22nd January 1993 indicating that there is no functional integrality between the two units. Both the Officers who belonged to the Enforcement Office, Solapur have recorded in detail their reasons for coming to the conclusion that M/s.Shreeji Plastics and M/s.Yamuna Plastics are separate independent establishments.

3. Both these reports were before Respondent No.1 who passed the impugned order. However, Respondent No.1 was of the view that since the two units are controlled and managed by single family, it was believed that the two units were functionally integral parts of one another. The Commissioner has found that the employees were transferred from M/s.Shreeji Plastics to M/s.Yamuna Plastics when the latter commenced operations. On this

basis, he has concluded that the two units are required to be clubbed together.

4. The finding of the Commissioner that because the two units were controlled by one family there has to be functional integrality between them cannot be sustained. Further, merely because workmen who were originally working in M/s.Shreeji Plastics commenced working in M/s.Yamuna Plastics it would not necessarily lead to the conclusion arrived at by the Commissioner. The submission of the Petitioner that two employees had resigned from M/s.Shreeji Plastics and had thereafter been employed in M/s.Yamuna Plastics also does not seem to have been considered. It would therefore be appropriate to remand the matter to the Regional Provident Fund Commissioner, Pune for consideration afresh, after taking into account the two reports and the submissions of the Petitioner.

5. Writ Petition disposed of accordingly.